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No. 87-913

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS AND PATRICK CAMPBELL, Business Manager, Local 825, International Union of Operating Engineers, AFL-CIO,

Petitioners,

v.

CATALYTIC, INC.,

Respondent.

MONMOUTH & OCEAN COUNTY BUILDING TRADES COUNCIL, ASBESTOS WORKERS LOCAL 14, PAT EIDING, BOILERMAKERS LOCAL 28, DAN KEARNEY, BRICKLAYERS & CEMENT MASONS LOCAL 8, TOM FARRELL, CARPENTERS & MILLWRIGHTS LOCAL 2018, FRANK KIRAJACICH, ELECTRICAL WORKERS LOCAL 400, JIM GRATTON, IRONWORKERS LOCAL 350, TOM KEPNER, LABORERS LOCAL 415, WILLIAM COLEMAN, PAINTERS LOCAL 694, ROBERT NEWMAN, PIPEFITTERS LOCAL 27, ROBERT DEBARTOLLO, TEAMSTERS LOCAL 825, PAT CAMPBELL, ALL OFFICERS, AGENTS, SERVANTS, MEMBERS OR EMPLOYEES OF UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY, individually and collectively, ALL OTHER PERSONS ACTING IN CONCERT WITH DEFENDANTS, individually or collectively or otherwise participating in their aid;

Other Parties.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the handbilling activity of Petitioner Local 825 and the work stoppage it caused were properly enjoined under this Court's decision in *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, where Local 825 and Catalytic, Inc. were parties to a collective bargaining agreement containing a grievance and arbitration provision, where the handbilling had the purpose and effect of precipitating a work stoppage among Catalytic's employees, and where the handbilling and work stoppage were over an arbitrable dispute?

2. Whether the First Amendment prohibits a *Boys Markets* injunction against handbilling which has the purpose and effect of precipitating a work stoppage over an arbitrable dispute?

PARTIES TO THE PROCEEDING

Respondent Catalytic, Inc. ("Catalytic") was acquired by United Engineers & Constructors, Inc. in late 1986. Catalytic now operates under the name UE&C — Catalytic, Inc. and is a wholly-owned subsidiary of United Engineers & Constructors, Inc., which in turn is wholly-owned by Raytheon Co. Petitioners are Local 825, International Union of Operating Engineers ("Local 825") and Patrick Campbell, Business Manager of Operating Engineers Local 825.

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CITATION OF OPINION BELOW

The opinion of the Court of Appeals for the Third Circuit is reported at 829 F.2d 430 (3d Cir. 1987).

COUNTERSTATEMENT OF THE CASE

Catalytic is a maintenance contractor which has provided supplemental engineering maintenance services to GPU Nuclear, Inc., the operator of the Oyster Creek Nuclear Generating Facility in Forked River, New Jersey ("Oyster Creek"), since March, 1983. (JA at 20).[1] Catalytic employs members of various craft unions, including Local 825, as needed to fulfill the terms of its contract with GPU Nuclear, Inc. (SJA at 28). Each of the craft unions, including Local 825, is party to a separate collective bargaining agreement with Catalytic. The provisions of those agreements, however, are identical.[2]

Paragraph 2 of Labor Agreement "A" addresses the provision of support services by the Oyster Creek site owner to Catalytic's craft employees.[3] In late 1985 this provision became a matter of continuing dispute between Catalytic and Local 825 when Local 825 objected to the site owner's practice of using its own employees to provide mobile crane support services to Catalytic's craft employees. This dispute came to a head when, on June

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1. "JA at " and "SJA at " refer to the Joint Appendix and Supplemental Joint Appendix, respectively, filed in the Court of Appeals.

2. The collective bargaining agreements consist of the General Presidents Project Maintenance Agreement ("the GPA") and an addendum to that Agreement known as "Labor Agreement A." (SJA at 48; JA at 22).

3. Paragraph 2 states:

> The owners' specialties shops, such as welding shop, machine shop, operations, instrument shop, crane services, janitorial services, trucking, etc., will support building trades crafts by providing the required support services.

(JA at 48).

13, 1986, members of Local 825 appeared at the entrances to the Oyster Creek facility and began to distribute handbills. (JA at 21). The handbills complained of the assignment of mobile crane services work to employees other than members of Local 825. In response to the handbilling by Local 825, all craft employees of Catalytic refused to report to work. (JA at 21).

Neither Local 825 nor any of the other craft unions filed a grievance under the collective bargaining agreements concerning this dispute. Each of the collective bargaining agreements contains an identical grievance and arbitration clause, which provides that "all grievances that may arise on any work covered by this Agreement must be filed within five (5) working days after the occurrence of events giving rise to the grievance," and that such grievances shall be processed thereafter through the grievance and arbitration procedures contained in Article VII of the GPA. (JA at 31). The district court found, and the Court of Appeals agreed, that the dispute between Catalytic and the craft unions, including Local 825, over the assignment of mobile crane work fell squarely within the grievance and arbitration clause of the collective bargaining agreement. (*See* Appendix C to Petition, at 17a; 28-29a).

On June 13, 1986, Catalytic filed a Verified Complaint and Application for an Order to Show Cause and Temporary Restraining Order against the craft unions and their principal representatives, including Petitioners, seeking an order enjoining the work stoppage and handbilling. (JA at 4). The Verified Complaint alleged that the unauthorized work stoppage and handbilling was in violation of the grievance and arbitration and no-strike provisions of the collective bargaining agreements between Catalytic and the craft unions. (*Id.*). Subject matter jurisdiction was based on section 301(a)

of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185(a) (1986). (*Id.*).[4]

After a hearing, the district court enjoined the work stoppage and handbilling, relying on this Court's decision in *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) (hereinafter referred to as "*Boys Markets*"). The court found that Catalytic was a party to collective bargaining agreements with the defendant craft unions, including Local 825, that the handbilling caused the work stoppage, that the dispute which motivated the handbilling and consequent work stoppage was over an issue subject to the grievance and arbitration procedure of the agreements, and that the handbilling and consequent work stoppage frustrated the parties' rights and obligations under that procedure. (*See* Appendix B to Petition). Local 825 was specifically enjoined only "[f]rom picketing, *handbilling at the job site*, and/or otherwise inducing or permitting or in any other manner interfering with persons attempting to enter or leave the Oyster Creek Nuclear Generating Station." (*See* Appendix B to the Petition, at 19a) (emphasis added).

Upon appeal by Local 825 and its Business Manager, Patrick Campbell, the Third Circuit Court of Appeals affirmed the district court's findings and order in their entirety. (*See* Appendix C to Petition). The Court of Appeals agreed that Local 825 was a party to a collective bargaining agreement with Catalytic, that the parties' dispute was arbitrable under that agreement, and that the handbilling had the purpose and effect of

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4. It is significant to note that, contrary to Petitioners' representation at pages 3-4 of their Petition, Catalytic did not base its Complaint on the unfair labor practice provisions of section 8(b)(4) of the National Labor Relations Act ("NLRA"), 29 U.S.C. §158(b)(4) (1986). Rather, Catalytic alleged only that Local 825 and the other craft unions had breached the collective bargaining agreements. (JA at 4). Indeed, there is no private right of action under section 8(b)(4). *See* 29 U.S.C. §160 (1986).

causing the work stoppage.[5] The Court of Appeals also concluded that the district court properly balanced Petitioners' rights under the First Amendment with the strong federal policy embodied in *Boys Markets* by prohibiting handbilling only at the Oyster Creek job site.

Petitioners (hereinafter referred to jointly as "Local 825") now seek review in this Court of the judgment of the Court of Appeals affirming the district court's enjoining of the handbilling at the job site.

SUMMARY OF REASONS FOR DENIAL OF WRIT

No special or important reasons exist within the meaning of Supreme Court Rule 17.1 to justify the grant of a writ of certiorari in the instant case. First, the limited prohibition against handbilling at the job site in the instant case is entirely consistent with this Court's decision in *Boys Markets* and other decisions upholding restrictions on the exercise of First Amendment rights through picketing and leafletting. Second, no conflict exists between the Court of Appeals decision below and the decisions of other Courts of Appeals, including the Eleventh Circuit in *Florida Gulf Coast Building & Construction Trades Council v. NLRB*, 796 F.2d 1328 (11th Cir. 1986), *cert. granted*, 107 S. Ct. 3182 (June 8, 1987) (No. 86-1461). Finally, the issuance of the injunction in the instant case was based on the peculiar factual circumstances surrounding the work stoppage and handbilling at the Oyster Creek facility, and consequently this case raises no important issues of law which need be addressed by this Court.

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5. The Court of Appeals also held in the alternative that the injunction against the handbilling was appropriate, even assuming *arguendo* that Local 825 was not party to a collective bargaining agreement with Catalytic. (*See* Appendix C to Petition, at 29-30a). The court recognized that a court in equity may enjoin not only parties to the contract sought to be enforced, but also third parties where such relief is necessary to effectuate the injunction. (*Id.*).

REASONS FOR DENIAL OF WRIT

A. Certiorari Should Be Denied Because The Decision Of The Court Of Appeals Below Affirming The Issuance Of The Injunction Was Consistent With The Decisions Of This Court.

The apparent thrust of Part I of the Petition is that certiorari should be granted because the petition below violated Local 825's First Amendment right to publicize its labor dispute through handbilling, and is inconsistent with the Eleventh Circuit Court of Appeals' decision in *Florida Gulf Coast Building & Construction Trades Council v. NLRB, supra.* Inexplicably, however, Local 825 fails to cite or even mention in Part I of its Petition the reliance by the Court of Appeals below on this Court's decision in *Boys Markets,* which specifically authorizes the issuance of an injunction against action by a party to a collective bargaining agreement which frustrates or interferes with the federal policy favoring the arbitration of labor disputes.[6] Because the Court of Appeals' affirmance of the *Boys Markets* injunction below is consistent with this Court's decisions in the area of labor injunctions, the Petition should be denied.

In *Boys Markets,* this Court held that a federal court has jurisdiction under section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a) (1986) to enforce an agreement to arbitrate unresolved grievances and to enjoin union activity which frustrates that agreement, despite the anti-injunction provisions of the Norris-La Guardia Act, 29 U.S.C. §104 (1982). In overruling its previous decision in *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962), this Court stated:

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6. Rather, Part I of the Petition is directed to the publicity proviso of section 8(b)(4)(B) of the NLRA, 29 U.S.C. §158 (b)(4)(B) (1986), and the constitutionality of an injunction prohibiting handbilling under that section. For the reasons set forth in Part B of this Brief, that discussion is inapposite for the simple reason that this case does not arise under section 8(b)(4)(B).

> The *Sinclair* decision . . . seriously undermined the effectiveness of the arbitration technique as a method peacefully to resolve industrial disputes without resort to strikes, lockouts, and similar devices. Clearly employers will be wary of assuming obligations to arbitrate specifically enforceable against them when no similarly efficacious remedy is available to enforce the concomitant undertaking of the union to refrain from striking. On the other hand, the central purpose of the Norris-LaGuardia Act to foster the growth and viability of labor organizations is hardly retarded — if anything, this goal is advanced — by a remedial device that merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration.

398 U.S. at 252-53. The essence of a *Boys Markets* injunction, therefore, is to enforce the parties' rights and obligations to resolve labor disputes through the collectively-bargained grievance and arbitration procedure, and to further the federal labor policy promoting arbitration as a preferred method of dispute resolution in the labor relations field. *See also Gateway Coal Co. v. United Mine Workers of America*, 414 U.S. 368, 382 (1974) ("[T]he strong federal policy favoring arbitration in labor disputes was the linchpin of this Court's reasoning in *Boys Markets*."); *Buffalo Forge Co. v. United Steelworkers of America, AFL-CIO*, 428 U.S. 397, 407 (1976) ("The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties.").

In the instant case, the Court of Appeals affirmed the district court's findings that a collective bargaining agreement remained in effect between Local 825 and Catalytic as of the time of the handbilling, that the purpose and effect of the handbilling was to cause a

work stoppage, that the dispute underlying the handbilling and resulting work stoppage was arbitrable under all of the parties' collective bargaining agreements, and that the handbilling and resulting work stoppage unlawfully breached the parties' rights and obligations under the grievance and arbitration clause of those agreements.[7]

Reading its Petition most generously, Local 825 is apparently arguing that the First Amendment absolutely protects handbilling, even where such handbilling concededly induces a work stoppage over an arbitrable dispute. (*See* Petition at 7-10). This Court has long held, however, that concerted activity by a labor organization, which includes elements of speech, may be restricted if necessary to further principles of federal statutory or common law. For example, this Court has held that the prohibition against secondary picketing by labor organizations under section 8(b)(4)(B) of the National Labor Relations Act, 29 U.S.C. §158(b)(4)(B) (1986), does not unconstitutionally infringe on a labor organization's First Amendment right to communicate with the public through picketing. *See, e.g., Int'l. Longshoremen's Assoc. v. Allied Int'l., Inc.*, 456 U.S. 212, 226 (1982) ("We have consistently rejected the claim that secondary picketing by labor unions in violation of 8(b)(4) is protected activity under the First Amendment"); *NLRB v. Retail Store Employees Union, Local 1001*, 447 U.S. 607, 608 (1980) ("The Court of Appeals suggested that application of §8(b)(4)(ii)(B) to the picketing in this case might

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7. Both the Court of Appeals and this Court must review the district court's findings of fact under a "clearly erroneous" standard. *See* Fed. R. Civ. P. 52(a) ("Findings of fact shall not be set aside unless clearly erroneous . . ."). This Court has stated that a finding is "clearly erroneous" *only if* "the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985).

violate the First Amendment . . . . We think not."); *IBEW, Local 501 v. NLRB*, 341 U.S. 694, 705 (1951).

The federal labor policy favoring the arbitration of labor disputes, which forms the basis for the Court's decision in *Boys Markets*, is one example of a compelling government interest justifying the regulation of otherwise protected activity, such as picketing or handbilling, under the First Amendment. *See, e.g., New Orleans Steamship Assoc. v. General Longshore Workers, Local No. 1418*, 626 F.2d 455, 462-63 (5th Cir. 1980), *aff'd sub nom., Jacksonville Bulk Terminals, Inc. v. Int'l. Longshoremen's Assoc.*, 457 U.S. 702 (1982). Because the Court of Appeals below found that limited injunctive relief was necessary to enforce the parties' rights and obligations under the grievance and arbitration procedure, the prohibition of handbilling at the job site was consistent with this Court's prior decisions.

This Court has also recognized that both picketing and handbilling are subject to reasonable "time, place and manner" regulations, so long as such restrictions "are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communications." *United States v. Grace*, 461 U.S. 171, 176-77 (1983). In the instant case, the district court found, and the Court of Appeals agreed, that the handbilling at the job site was a "signal" to other craft employees to engage in a work stoppage in sympathy with Petitioners' labor dispute. (*See* Appendix C to Petition, at 35a). In order to eliminate this "signal" and its resulting frustration of the parties' agreement to arbitrate their disputes, the district court properly tailored the injunction to prohibit handbilling at the job site only, and did not restrict the handbilling in any other way.[8]

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8. The district court's finding was consistent with decisions of the National Labor Relations Board, which has long held that handbilling in practice may supply the same "signal" to employees

Accordingly, because the district court found and the Court of Appeals affirmed that an injunction was necessary to enforce the federal labor policy favoring arbitration of labor disputes, and because the district court limited the injunction to handbilling at the work site, no conflict exists between the decision below and this Court's decisions which would justify the exercise of certiorari jurisdiction.

B. Certiorari Should Be Denied Because The Decision Of The Court Of Appeals Below Is Not In Conflict With The Eleventh Circuit Court Of Appeals' Decision In *Florida Gulf Coast Building and Construction Trades Council v. NLRB*.

Rule 17.1(a) of the Supreme Court Rules of Procedure states that this Court will consider issuing a writ of certiorari "[w]hen a federal court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter." Although this Rule does not define the term "conflict," it is clear from past decisions of this Court that the conflict must be substantial, and directed to the application of a principle of law. A conflict resulting from different fact patterns will not warrant review by writ of certiorari. *See, e.g., Wisconsin Electric Co. v. Dumore Co.*, 282 U.S. 813 (1931) ("It appearing that the asserted conflict in decisions arises from differences in states of fact, and not in the application of a principle of law, the writ of certiorari is dismissed as improvidently granted."); *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923) ("[I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance

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not to work as would a picket line. *See, e.g., Lumber and Sawmill Workers, Local Union 2797*, 156 N.L.R.B. 388, 394 (1965); *National Assoc. of Broadcast Employees and Technicians, Local 31*, 237 N.L.R.B. 1370 (1978).

to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.").

Petitioners apparently argue that certiorari should be granted in the instant case because the Third Circuit Court of Appeals' decision conflicts with the Eleventh Circuit Court of Appeals' decision in *Florida Gulf Coast Building and Construction Trades Council v. NLRB*, 796 F.2d 1328 (11th Cir. 1986), *cert. granted*, 107 S. Ct. 3182 (June 8, 1987) (No. 86-1461).[9] Catalytic respectfully submits that no such conflict exists.

The Eleventh Circuit considered two issues in *Florida Gulf Coast:* first, "whether a union violates §8(b)(4)(ii)(B) of the National Labor Relations Act when it distributes handbills urging a consumer boycott of all the tenants of a mall in furtherance of its dispute with the company constructing a building for one tenant of the mall," 796 F.2d at 1330; and second, whether interpreting section 8(b)(4) to prohibit such handbilling would create a conflict with the First Amendment. 796 F.2d at 1332. Applying the principle "that an Act of Congress not be construed to violate the Constitution if any other possible construction remains available," the Eleventh Circuit found that section 8(b)(4)(ii)(B) was not intended to prohibit nonpicketing labor publicity, including the peaceful and orderly handbilling involved in that case. 796 F.2d at 1346.

The Eleventh Circuit decision is distinguishable from the instant case both legally and factually. First, the Eleventh Circuit case arose in the context of a statutory unfair labor practice proceeding under section 8(b)(4) of the NLRA, 29 U.S.C. §158(b)(4) (1986). The legal issue presented was whether a statutory prohibition against handbilling would conflict with the First Amendment.

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9. *See* n. 6, *infra*.

In contrast, the instant case is a breach of contract action under section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a) (1986). This difference is significant because the essence of Catalytic's breach of contract claim is that Local 825 breached obligations to which it *contractually consented* under the grievance and arbitration procedure of the collective bargaining agreement by handbilling and precipitating a work stoppage over an arbitrable dispute. In granting the injunction and limiting the handbilling, the district court simply enforced Local 825's voluntary obligations under the collective bargaining agreement. Consequently, the issue present in the Eleventh Circuit case — whether interpreting a federal statutory provision to prohibit handbilling would be inconsistent with the First Amendment — is significantly different from the issue present in the instant case — whether Local 825 could be enjoined from breaching its contractual obligation to arbitrate disputes arising under the parties' collective bargaining agreement.

Second, even assuming *arguendo* that the legal principles governing the Eleventh Circuit case apply to the instant case, the two cases are distinguishable on their facts. The Eleventh Circuit specifically noted that it was "not faced with the situation where the distribution of handbills took on some of the aspects of picketing," 796 F.2d at 1334 n.6, that the handbills "lacked any elements which could threaten, coerce, or restrain the listeners . . . ," *Id.* at 1335, and that the handbills did not induce the listeners to act unlawfully. *Id.* In contrast, the Third Circuit in the instant case found that Local 825's handbilling and its "signal" to engage in a work stoppage was indistinguishable from picketing, that the purpose of the handbilling was to solicit sympathetic action, and that the handbilling did induce an unlawful work stoppage by all craft employees at the job site. (*See* Appendix C to Petition, at 31-32a, 34a) ("The repeated work stoppages demonstrated that Local 825

sought to persuade the other craft unions to violate their contractual no strike obligations."). As such, the "pure speech" aspects of handbilling which created the conflict with the First Amendment in the Eleventh Circuit case are simply not present in the instant case. *Cf. NLRB v. Retail Store Employees Union, Local 1001*, 447 U.S. 607, 619 (1980) ("The [section 8(b)(4)] ban in this case affects only that aspect of the union's efforts to communicate its views that calls for an automatic response to a signal, rather than a reasoned response to an idea.") (J. Stevens, concurring).

C. Certiorari Should Be Denied Because The Decision Of The Court Of Appeals Below Raises No Special Or Important Issues For This Court's Review.

Rule 17.1 of the Supreme Court Rules of Procedure provides that "[a] review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." As stated by Chief Justice Taft in *Magnum Import Co., Inc. v. Coty*, 262 U.S. 159, 163 (1923), certiorari jurisdiction "was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing." Rather, a petition for writ of certiorari must raise a question of public importance, and not a question limited to the interest of the immediate litigants. *See, e.g., Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955) (noting that the Supreme Court does not "sit for the benefit of the particular litigants").

The instant case is particularly inappropriate for certiorari jurisdiction because the issue of whether the district court properly exercised its discretion in issuing the *Boys Markets* injunction turns largely on the peculiar factual circumstances of this case. Although Local 825 obviously disagrees with the factual findings of the

district court, those factual findings must be sustained unless "clearly erroneous." Fed. R. Civ. P. 52(a).

In deciding to issue the *Boys Markets* injunction, the district court made the following findings of fact, which were affirmed by the Court of Appeals: Catalytic and the craft unions, including Local 825, were parties to collective bargaining agreements which contained a grievance and arbitration clause; the parties had a dispute over an issue covered by the agreements; Local 825 engaged in handbilling over that dispute with the purpose and effect of precipitating a work stoppage; and the handbilling and resulting work stoppage frustrated the parties' rights and obligations under the agreement. (*See* Appendix C to Petition, at 25-26a; 27a; 34a). Obviously, these factual findings are unique to the litigants in the instant case, and raise no question of public importance. Rather, Local 825 merely seeks an opportunity for further review of the district court's factual findings, and thus the exercise of certiorari jurisdiction is inappropriate. *See, e.g., United States v. Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts.").

Similarly, in part II of its Argument, Local 825 contends that the Court of Appeals erred in holding that the handbilling could be enjoined even if it were not a party to an agreement with Catalytic, because such an injunction was necessary to effectuate fully the district court's enjoining of the work stoppage caused by the handbilling. *See, e.g., Pittsburgh-Des Moines Steel Co. v. United Steelworkers of America, AFL-CIO*, 633 F.2d 302 (3d Cir. 1980). The Court of Appeals, however, addressed this issue only as an alternative to its primary holding that Local 825 was in fact a party to a collective bargaining agreement with Catalytic, and that Local 825's handbilling violated its obligations under that agreement. (*See* Appendix C to Petition, at 29-30a).

Consequently, although the Court of Appeals' alternative holding may "present an intellectually interesting and solid problem," it does not rise to a "special and important reason" for the exercise of certiorari jurisdiction. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955).

CONCLUSION

No special or important reasons exist for the exercise of certiorari jurisdiction in the instant case. First, the issuance of a *Boys Markets* injunction limiting Local 825's handbilling to areas other than the work site is consistent with this Court's decision in *Boys Markets* and decisions upholding restrictions on picketing and leafletting against First Amendment-based challenges. Second, the decision below does not conflict with the decisions of other Court of Appeals, including the Eleventh Circuit Court of Appeals' decision in *Florida Gulf Coast Building and Construction Trades Council v. NLRB*. Finally, the decision below does not involve an important question of law which must be settled by this Court since the injunction in the district court was based on factual findings which are unique to the circumstances of this case. For all the above reasons, therefore, Catalytic respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief of Respondent Catalytic, Inc. in Opposition to Petition for Writ of Certiorari was served on counsel for Petitioners at the address below by United States, first-class postage prepaid mail on December 24, 1987 pursuant to Supreme Court Rule of Procedure 28.3:

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